In the absence of Mr. P. Kirsch (Canada), Mr. Ivan (Romania), Vice-Chairman, took the Chair.

The meeting was called to order at 6.05 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.59 and Corr.1)

Part 2 of the draft Statute (continued)

Proposal prepared by the Bureau (continued)

1. **Mr. EL MASRY** (Egypt) noted with regret the proposal made in document A/CONF.183/C.1/L.59 that, if no generally accepted provisions were developed that day, the crime of aggression should not be included in the Statute. The group of countries belonging to the Non-Aligned Movement had decided to continue the quest for a simplified definition of aggression, referring to armed aggression against the political independence or territorial integrity of States, occupation of territories or annexation, which might enable the Conference to come up with a text acceptable to all.

2. With respect to article 5 *quater*, his delegation believed that the Statute should deal only with those crimes deemed to be war crimes by customary international law. Egypt was reluctant to accept any threshold for war crimes in accordance with the Geneva Conventions and their Protocols, but was prepared to accept option 2 as a compromise.

3. With regard to paragraph (o) of section B, he was disappointed to note that the Bureau proposal offered only one option, which was supported by the nuclear States but which was totally unacceptable to his delegation because it made no reference to nuclear weapons. If the Court was to be an international, rather than a European body, a text acceptable to all must be found.

4. As for internal conflicts, section D was unacceptable, as its contents were not yet recognized as customary international law. Paragraph (f) of section D, which related to children, should be relocated in section C, and the remainder of section D deleted. Article xx, on elements of crimes, was too imprecise to serve any useful purpose. Article Y, however, was acceptable as it stood. With regard to article 6, Egypt was one of a number of States that had requested that the General Assembly should be given the right to refer situations to the Court. Article 7, paragraph 1, was acceptable as it stood, and his delegation favoured option 1 in paragraph 2. It favoured option II in article 7 *bis*, and article 7 *ter* was acceptable as it stood.

5. As to the role of the Security Council, Egypt preferred option 3, but would be prepared to review its position if the crime of aggression was included in the Statute and an equal role conferred on the General Assembly, subject, however, to three conditions. First, a time limit—preferably non-renewable, and in any case not indefinitely renewable—must be fixed for any suspension requested by the Security Council; secondly, such request must take the form of a Security Council resolution; thirdly, the Court must have the right to request the Security Council to look into a situation of aggression if the Council had not done so of its own motion.

6. Egypt had serious reservations about conferring *proprio motu* powers on the Prosecutor: to do so might hamper the Prosecutor's effectiveness in practice. As to article 15, the criteria set forth therein were not objective: the only criterion that could be assessed objectively was the total collapse of the national judicial system. As to article 17, challenges to the jurisdiction of the Court should be brought before the Pre-Trial Chamber or the Appeals Chamber. The decision should be unanimous, or else taken by a two-thirds majority.

7. **Mr. MAEMA** (Lesotho) reiterated his delegation's view that the Court should have automatic jurisdiction in respect of all core crimes. Lesotho accepted option 1 of article 7 *bis*. With regard to article 10, the fact that the Security Council was seized of a matter under Chapter VII should not impede or suspend the Prosecutor's powers to investigate or prosecute crimes under the Statute. On article 12, the judicial review mechanism envisaged elsewhere in the Statute provided sufficient safeguards with respect to the Prosecutor's role. Lastly, while his delegation appreciated the need for inclusion of elements of crimes in the Statute, it believed that those elements should serve only as guidelines, and should be without binding effect.

8. **Mr. DABOR** (Sierra Leone) said that his delegation urged that sections C and D should be included in the new article 5 *quater*, but it had reservations, for example, regarding the *chapeau* to section D, which referred to organized armed groups that exercised "control over a part of [a State party's] territory". That wording was very restrictive: in his own country, for example, the rebel forces did not occupy a territory. Thus, as presently drafted, section D would exclude the type of internal conflict presently taking place in Sierra Leone. His delegation therefore proposed that the second sentence of the *chapeau* should be replaced by the text: "It applies to armed conflicts that take place in a territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups."

9. With respect to the jurisdictional modalities, his delegation would prefer the order of articles 7 and 7 *bis* to be inverted, and favoured option 1, namely, automatic jurisdiction over the three core crimes. On article 10, his delegation favoured option 1 and welcomed the new safeguard requiring the Security Council's request to take the form of a resolution. Such requests, however, must not be renewable indefinitely; his delegation therefore proposed that they should cease six months after the first renewal. With regard to article 12, sufficient safeguards already existed and option 2 should be deleted. As for article xx, that provision, too, could be deleted.

10. **Ms. DASKALOPOULOU-LIVADA** (Greece) noted that, despite the fact that an overwhelming majority of participants favoured its inclusion, the crime of aggression was not to be included in the Statute. Her delegation was not convinced that the obstacles to its inclusion were insurmountable. The same was true of the question of the role of the Security Council. Matters should not be allowed to rest there: the Preparatory Commission should be mandated to formulate a definition of aggression and explore the mode of involvement of the Security Council, perhaps in a resolution appended to the Final Act. The outcome of that work could then be submitted to the review conference for consideration and action.

11. On the question of jurisdiction, Greece had consistently expressed its strong preference for automatic jurisdiction over all core crimes, and thus favoured option I for article 7 *bis*. It also favoured option 1 for article 7, paragraph 2. With regard to article 10, it supported option 1, which more accurately reflected the proposal originally submitted by Singapore. It also supported option 1 for article 12, as the inclusion of additional safeguards would impede the effectiveness of the Prosecutor's functions.

12. **Mr. BELLO** (Nigeria) said his delegation was dismayed that the Bureau proposal did not include aggression among the core crimes within the Court's jurisdiction, in spite of the support for its inclusion expressed by more than 90 per cent of speakers. Nigeria strongly supported inclusion of the crime of aggression in the Statute, and the

problem of a definition should be the subject of further discussions in the Committee of the Whole. It was also disappointed that nuclear weapons and anti-personnel mines, methods of warfare that were inherently indiscriminate, were not included in paragraph (o) of section B, and hoped that issue would be reconsidered. Nigeria favoured the inclusion of paragraph (p *bis*), and looked forward to agreement on a definition of crimes of sexual violence.

13. Nigeria also supported article xx, but the elements of crimes should be finalized before signature of the Statute. On article 7, it favoured the uniform approach set forth in the Bureau's previous discussion paper (A/CONF.183/C.1/L.53), as well as option I for article 7 *bis*. For article 10, it supported option 3. It continued strongly to favour the deletion of article 12, and was not convinced that additional safeguards under option 2 would allay fears as to the credibility and independence of the institution of prosecutor. Nigeria also supported articles 15 and 16, but endorsed the comments by the representative of Ghana regarding the drafting of the last sentence of article 16, paragraph 2. Without prejudice to the further discussion on article 17, it strongly supported its inclusion in the Statute.

14. **Mr. POLITI** (Italy) said he had two observations to make concerning the definition of crimes. The first related to paragraph (o) of section B, which reflected option 1 set forth in the earlier discussion paper (A/CONF.183/C.1/L.53). The insertion in the *chapeau* of a reference to weapons inherently indiscriminate in violation of international humanitarian law was very helpful, and subparagraph (vi) offered a potentially promising solution to the problem of weapons not included in the list.

15. Secondly, it was clear that the new *chapeau* of section D and the last paragraph of sections C and D provided for substantial restrictions on the applicability of the Statute to internal conflicts. The acceptability of those new formulations was contingent on the acceptance of the entire package of provisions contained in sections C and D, to which Italy attached the greatest importance. It also endorsed other delegations' concerns about the absence of provisions on prohibited weapons in internal armed conflicts.

16. Italy's position with regard to the difficult issue of jurisdiction had always been very clear: it favoured granting the Prosecutor the power to initiate investigations ex officio, and thus supported article 6, paragraph (c), and option 1 of article 12; it also supported automatic jurisdiction over all three core crimes under general international law with the provision of alternative jurisdictional links indicated in option 1 of article 7, paragraph 2. It was opposed to option 3 for the reasons already given by previous speakers.

17. Italy also supported the suggestion made that the articles on acceptance of jurisdiction and preconditions to the exercise of jurisdiction should be reordered. Such a reordering should also help clarify the differing situations of States parties and non-parties. Finally, he did not believe that additional safeguards were needed with respect to the role of the Prosecutor, but the drafting of article 16 could be reviewed in that connection.

18. **Mr. MANSOUR** (Tunisia) said there was still time to reach agreement concerning the crime of aggression. With regard to article 7, paragraph 2, his delegation believed that the State of nationality of the victim must accept the Court's jurisdiction. Though it was prepared to accept article 8, it considered that paragraph 1 of the original article 8 was a better text, and should be reinstated. As to article 10, the text still required further clarification. Tunisia wished to see the Security Council assigned a role in accordance with international instruments. The new text of article 12 represented an improvement on the previous texts, as it contained a safeguard in the form of the Pre-Trial Chamber. He had reservations about article 15, the provisions of which were not sufficiently clear.

19. **Mr. BIHAMIRIZA** (Burundi) said that his delegation would have liked the crime of aggression to have been defined during the Conference so that it could be included in the Statute. Proposals to include economic embargoes violating international law among crimes against humanity should be considered at a review conference.

20. On article 5 *ter*, his delegation proposed that the word "multiple" should be deleted from paragraph 2 (a), as an individual act might well be a crime against humanity. It supported option 2 in article 5 *quater*, and deplored the exclusion of nuclear weapons and anti-personnel landmines. It saw no need for article xx; the crimes concerned were already adequately defined, and the Court should be left some latitude. On the other hand, his delegation supported the inclusion of article Y.

21. With regard to exercise of jurisdiction and preconditions thereto, the Statute should not differentiate between genocide and the other core crimes; Burundi thus supported option 1 of article 7, paragraph 2, which should be merged with paragraph 1. In article 7 *bis*, it favoured option I. On article 10, it would have liked the suspension period to be shorter, but could accept the provision as worded, provided that the need for preservation of evidence was addressed. Finally, it reaffirmed its support for option 1 in article 12.

22. **Mr. KATUREEBE** (Uganda) said that the Court's jurisdiction should extend to all the core crimes defined in the Statute. The Court must have a strong, independent prosecutor with the power to initiate investigations. The language of option 1 in article 12 was acceptable to his delegation, although he did not rule out additional safeguards.

23. Uganda shared other delegations' concern about the watering down of the Court's jurisdiction over situations of internal conflict. As currently worded, the second sentence of the *chapeau* of section D severely limited the Court's scope in that regard. Whether or not the perpetrators controlled territory was immaterial: they might be operating from a neighbouring country, with or without that country's consent, as was currently the case in Uganda. His delegation thus supported the proposal by the representative of Sierra Leone with regard to the *chapeau* of section D.

24. **Mr. NATHAN** (Israel) said he did not support the view that the threshold for war crimes given in options 1 and 2 of article 5 *quater* was unnecessary because the *chapeau* to article 5 already restricted the Court's jurisdiction to the most serious crimes of concern to the international community as a whole. That *chapeau* dealt with general categories of crimes; it would still be necessary to make clear, under the war crimes heading, that the Court would be concerned only with crimes which were part of a plan or policy or a large-scale commission of such crimes, in line with option 1 in article 5 *quater*.

25. His delegation reserved its position with regard to paragraph (f) of section B, concerning the transfer of a civilian population, and particularly opposed the words "directly or indirectly", which had no basis in customary international law.

26. With regard to paragraph (t) of section B, the insertion of the word "national" before the words "armed forces" did not reflect the object and purpose of the Convention on the Rights of the Child. He noted that the adjective "national" was not used to qualify the words "armed forces" in paragraph (f) of section D, which likewise dealt with conscription of children.

27. Israel favoured the inclusion of a definition of elements of crimes, as provided for in article xx: many of the criminal acts covered by article 5 had been identified some ninety years previously and were in dire need of redefinition. It favoured option II in article 7 *bis*, to give expression to the consensual nature of the Statute and help

secure its widest possible acceptance by the international community. In article 7, it favoured a combination of options 2 and 3, requiring acceptance of jurisdiction by the territorial State, the custodial State and the State of nationality.

28. On article 12, Israel had already expressed concern that conferral of *proprio motu* powers on the Prosecutor might adversely affect his or her independence by exposing him or her to all kinds of constraints and pressures. Either provision should be made for additional safeguards before the Prosecutor could act, or article 12 should be dispensed with. On article 8, while his delegation favoured merging the original articles 8 and 22, it was essential that the article should contain a provision relating to the non-retroactivity of the Court's jurisdiction. With regard to article 10, a balance should be struck between the position of the Security Council as laid down in the Charter and the proper functioning and independence of the Court.

29. **Mr. BAZEL** (Afghanistan) said that most of his delegation's comments with regard to the earlier discussion paper (A/CONF.183/C.1/L.53) were also applicable to the new proposal (A/CONF/183/C.1/L.59). His delegation considered aggression to be the "mother of crimes", and strongly supported the position of the Non-Aligned Movement in that regard. It favoured the definition of aggression proposed in document A/CONF/183/C.1/L.56, paragraph 2 (g) of which reflected the language of article 3 (g) of the definition of aggression annexed to General Assembly resolution 3314 (XXIX). On article 10, his delegation continued to support option 1, provided that: (a) the period of suspension was limited to six months; (b) the period was renewable once only; (c) the gathering of evidence and investigation should continue during that period; and (d) if no decision was taken by the Security Council at the end of the period, the Court could proceed independently. With regard to article 12, his delegation associated itself with the views expressed by the representatives of Turkey and Egypt.

30. **Mr. BOUGUETAIA** (Algeria) said that the Bureau proposal gave his delegation some grounds for hoping that the obstacles to the success of the Conference might still be overcome. Algeria's firm support for the inclusion of the crime of aggression in article 5 scarcely needed reiterating. Despite near-unanimous support for its inclusion, that crime appeared no longer to feature on the Conference's agenda. With sufficient political will, the definitional problem could have been overcome and the crime of aggression included in the Statute.

31. On war crimes, Algeria endorsed the call for the inclusion of nuclear weapons in the list of proscribed weapons in paragraph (o). It continued to oppose inclusion of internal armed conflicts under the Court's jurisdiction, on account of the practical difficulty of distinguishing between true armed conflict and policing operations intended to restore public order. His delegation noted with satisfaction that a provision had been inserted at the end of section D, taking account of the need to defend the territorial integrity of States by all means consistent with international law. It might be willing to accept sections C and D subject to some redrafting.

32. Algeria regarded the explicit consent of the State as fundamental to article 7 *bis*. In the interests of consensus, it could, if necessary, accept option II. On article 10, it favoured option 1, with a few additional safeguards. On article 12, it opposed *proprio motu* powers for the Prosecutor, which would be detrimental to his effectiveness and credibility. Its preferred option was the deletion of article 12; failing that, it would favour option 2, with provision for additional safeguards before the Prosecutor could act. Article 16 might provide an initial safeguard, as well as affirming the principle of complementarity.

33. **Mr. EFFENDI** (Indonesia) said his delegation fully endorsed the position of the Non-Aligned Movement concerning the crime of aggression and nuclear weapons. It continued to favour the deletion of article 6 (c) and of article 12. However, it could consider a package based on option 2 for article 12 and the reformulation of articles 15 and 18, together with the provision for the protection of national security information.

34. Over-politicization had added to the difficulties of the negotiation process. It now appeared that the Court would no longer have jurisdiction only over situations where a national criminal justice system had totally or partially collapsed, but would also have the power to hear and overrule decisions on purely domestic matters, taken by the executive and judicial branches of sovereign States in accordance with their national laws and constitutions. The danger of investigations being initiated for political motives could not be disregarded. While some had argued that the integrity of the Prosecutor and the filtering role of the Pre-Trial Chamber would provide safeguards against such investigations, neither Prosecutor nor judges could be expected to have a full understanding of the situation and internal security problems of each and every developing society. Article 6 (c) and article 12, as well as articles 15 and 18 as currently drafted, eroded the principle of complementarity that was one of the fundamental bases for the Court's jurisdiction.

35. With regard to article 5 *quater*, in a spirit of compromise his delegation was now prepared to accept the inclusion of sections C and D, provided that option 1 was chosen for the *chapeau* and that the provisions were supplemented in the manner proposed by the representative of Thailand. On article 7, it could accept the proposal to combine options 2 and 3. It continued to believe that option II for article 7 *bis* was essential if the goal of universal accession was to be achieved.

36. It might be better to leave the problem posed by article 10 to be resolved by the Assembly of States Parties and the States Members of the United Nations, should a case of conflicting jurisdiction between the Court and the Security Council arise in the future. The integrity of Articles 39 and 103 of the Charter would not be jeopardized if option 3 were chosen. His delegation also strongly supported the inclusion of article 16, which embodied the principle of complementarity.

37. **Ms. LEHTO** (Finland) said her delegation supported what had been proposed by the representative of Austria at the Committee's 33rd meeting concerning the *chapeau* of section D in article 5 *quater*. Alternatively, the second sentence of the *chapeau* could be deleted.

38. Her delegation attached great importance to the inclusion of paragraph (p *bis*) and paragraph (g) of article 5 *ter* in their entirety and was pleased to note that considerable progress had been made towards achieving a widely acceptable definition of crimes of sexual violence. It supported the suggestion that articles 6, 7 and 7 *bis* should be reordered. On article 7 *bis*, it firmly believed that there was no viable alternative to the automatic jurisdiction of the Court over all three core crimes. Especially in the light of articles 15 and 17, retention of option II would amount to a double threshold for the exercise of the Court's jurisdiction. Finland also favoured a unified regime with regard to preconditions along the lines of option 1 in article 7, paragraph 2. To draw a distinction between genocide and other core crimes did not really make sense, as in practice those crimes often overlapped.

39. Article xx would require considerable redrafting so as to make it clear that elements of crimes would not be binding on the Court, and that their completion would not delay its operation. Option 1 of article 10 was acceptable, on condition that the language concerning the need for preservation of evidence was included. On article 12, Finland strongly favoured *proprio motu* powers for the Prosecutor. It continued to think that option 1 already contained sufficient safeguards. Too many procedural obstacles should not be placed in the way of the Court's operations.

40. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that the Bureau proposal constituted a sound basis from which to work towards an acceptable text for Part 2. The crime of aggression should be included in the Statute only if sufficiently clearly defined. That matter could best be considered by the Assembly of States Parties, in a procedure that would enable the Court's material jurisdiction to be reviewed without the need for a complete review of the Statute.

41. With regard to war crimes, Venezuela supported option 2 for the *chapeau* of article 5 *quater*, and also inclusion of the use of nuclear weapons in paragraph (o) of section B. It also supported reference to internal armed conflicts: what was important was the nature and seriousness of the crime, rather than the context in which it was committed. It favoured the inclusion of paragraph (c) in article 6, and option 1 for article 12. Article 6 (b) was important, but did not imply that the Court was in any way beholden to the Security Council. Its decision whether to exercise jurisdiction must be taken independently.

42. With regard to article 7, his delegation supported the proposals regarding genocide, and for paragraph 2, although it was flexible, it would prefer option 2. It favoured option II in article 7 *bis*, but would join any consensus that emerged with regard to that article. It supported article 7 *ter* without the last sentence, which was superfluous.

43. On article 10, while the competence of the Security Council in political matters could not be ignored, the Court must enjoy the necessary autonomy in exercising its jurisdiction. A more flexible clause should be inserted calling on the Court to take account of recommendations of the Security Council in exercising jurisdiction. However, his delegation would be prepared to discuss a compromise solution based on option 1. On article 12, it believed that the Prosecutor should have the necessary independence to trigger investigations, in conjunction with the pre-trial procedures and taking into account the legislation of the States concerned. On article 16, notification that there would be a reasonable basis to commence an investigation should be confined to States parties. Article 16 established a series of prerogatives for States not parties without any reference to article 7. It required redrafting.

44. **Mr. PERERA** (Sri Lanka) said there was a need for a high threshold with respect to war crimes, as not all crimes committed in time of war amounted to grave breaches of the rules of war. His delegation therefore supported option 1 in article 5 *quater*. On internal conflicts, section D continued to pose problems when applied to situations in States with functioning legal systems and institutions, as there would be a conflict with the principle of complementarity. In a spirit of compromise, however, his delegation was prepared to consider accepting the provision contained in paragraph (f) of section D, on the clear understanding that an opt-in regime would be adopted in respect of war crimes.

45. To exclude terrorism and drug trafficking from the scope of the Statute would constitute a grave omission. The distinction between core crimes and treaty crimes was an artificial one: the infliction of indiscriminate violence on innocent civilians was legally unacceptable and morally reprehensible in times of war and peace alike. However, although his delegation strongly favoured inclusion of those crimes in the Statute, it would be willing to support the compromise proposal for a nominal enumeration of those crimes, leaving the elaboration of elements to the Preparatory Commission, pursuant to article xx, paragraph 2. The same approach should be adopted with respect to the crime of aggression, the absence of which from the Statute would be a serious lacuna.

46. On the question of prohibited weapons in article 5 *quater*, section B, paragraph (o), subparagraph (vi) contained the elements of a compromise. However, he strongly advocated the inclusion of nuclear weapons in the list of prohibited weapons. His delegation favoured a cumulative approach to the question of preconditions to the exercise of jurisdiction, requiring acceptance of jurisdiction by the territorial and custodial States. In article 7 *bis*, on acceptance of jurisdiction, it supported option II, as the legal clarity that existed under the Genocide Convention did not extend to other crimes. On the role of the Security Council, option 1 provided a basis for compromise. On the *proprio motu* powers of the Prosecutor, there was no justification in international law for the powers envisaged under article 12, which seriously threatened the principle of complementarity.

47. **Mr. MANONGI** (United Republic of Tanzania) said his delegation shared the concern expressed that the necessary political will to secure inclusion of the crime of aggression in the Statute was lacking. His delegation had

consistently supported automatic jurisdiction over all three core crimes, as provided for in option 1 of article 7 *bis*. However, while it had become resigned to option 2, it reiterated its strong concerns about the inherent weakening of the Court implied by that approach.

48. On the role of the Security Council, his delegation would have preferred the "no such provision" option, as the Court should not only be independent but also seen to be independent. In the interests of progress, however, his delegation was willing to support option 1. Article 12 had prompted strong reservations, which might be allayed by the adoption of additional safeguards. Article 16 could be seen as offering such safeguards, and his delegation hoped that those with reservations regarding the *proprio motu* powers of the Prosecutor would reconsider them.

49. His delegation failed to see how elements of a crime could not be considered an integral part of the definition thereof. If article xx was adopted, the elements should be binding. Lastly, on war crimes, his delegation continued to favour option 2 for the *chapeau* to article 5 *quater* and the inclusion of nuclear weapons in paragraph (o) of section B, and was highly concerned at the formulation of the *chapeau* of section D. The new threshold contained therein was too high to allow the Court to play any meaningful role in the situations of non-international armed conflict with which the international community was increasingly faced.

50. **Mr. WENAWESER** (Liechtenstein) said that the Bureau proposal (A/CONF.183/C.1/L.59) offered a very good basis on which to achieve a compromise for Part 2. The question of the inclusion of aggression and treaty crimes was linked with articles 110 and 111, which were of crucial importance for the Statute as a whole and must be drafted so as to accommodate the legitimate concerns of delegations that favoured inclusion of those crimes.

51. On acceptance of jurisdiction, his delegation reiterated its strong preference for option I of article 7 *bis*. Automatic jurisdiction over the three core crimes was crucial for the effective functioning of the Court. The principle of equal treatment of the core crimes also applied to article 7, and his delegation favoured the language contained in its paragraph 1.

52. On article 10 it continued to favour option 1, although it might be possible to bridge the gap between the two options. Discussion should be devoted to the need for preservation of evidence, and to the question of the "specified period of time" referred to in option 2, which his delegation found unacceptable. On article xx, his delegation favoured inclusion of elements of crimes in the Statute, provided that its entry into force was not thereby delayed. It favoured deletion of paragraph 4. On the question of additional safeguards, it continued to believe that article 12 was adequately drafted, taking into account article 16.

53. Agreement seemed to be closer on the thorny issue of war crimes. His delegation was unhappy with some of the changes made in the draft, but was willing to look at the language proposed in a wider context. With respect to section B, paragraph (p *bis*) of article 5 *quater* and paragraph 1 (g) of article 5 *ter*, the time had come to reach an agreement on the inclusion of the crime of forced pregnancy.

54. **Mr. MAHMOOD** (Pakistan) said that his delegation was prepared to consider option II in article 7 *bis*, and supported article 7 *ter*. With regard to war crimes, it was opposed to the Court having jurisdiction over armed conflicts not of an international character, except in a situation where the State structure had collapsed. It would thus prefer to see sections C and D eliminated from the Statute. In a spirit of compromise, his delegation was prepared to consider elements of crimes, provided that they served only as guidelines and did not delay the entry into force of the Statute. Pakistan's position on exercise of jurisdiction was that the State should be the trigger mechanism for initiating the Court's jurisdiction, and it therefore favoured article 6 (a).

55. On the role of the Security Council, his delegation favoured option 3 for article 10. With regard to article 12, it was of the firm view that conferral of *proprio motu* powers on the Prosecutor would contravene the principle of complementarity. Consequently, it was also unable to support any reference in article 16 to the Prosecutor initiating an investigation pursuant to article 6 (c). Furthermore, the investigation by the Prosecutor should be stayed while the Pre-Trial Chamber was considering admissibility.

56. On article 15, paragraph 1 (a), his delegation had difficulty with the words "unwilling or", which violated the principle of complementarity. Those words should therefore be deleted, as should subparagraph (b) of paragraph 1. Paragraph 2 was unacceptable, but paragraph 3 could be retained, as it elaborated on the term "unable genuinely" contained in paragraph 1 (a).

57. **Mr. AL-BAKER** (Qatar) said that the crime of aggression should fall within the Court's jurisdiction, and that agreement should be reached on a definition. Qatar could not accept the jurisdiction of the Court over internal conflicts, except in cases of total collapse of a State's judicial system, and wished to reaffirm the principle of complementarity between national systems and the Court. It also favoured the independence of the Prosecutor, who should not, however, be given total latitude with regard to *proprio motu* triggering.

58. **Mr. MAGALLONA** (Philippines) endorsed the position of the Non-Aligned Movement concerning inclusion of the crime of aggression in the Statute. The review conference must give the highest priority to resolving that outstanding concern. On the role of the Security Council, his delegation proposed that article 10 should read: "In the event that the Court is requested by the Security Council, acting by resolution adopted under Chapter VII of the Charter of the United Nations, not to commence or to suspend its investigation or prosecution of a situation for a period of 12 months from receipt of such request by the Court, the Court may refrain or suspend such activity for such period of time." The provision allowing renewal of the request should be deleted.

59. On war crimes, his delegation preferred option 2. Paragraph (g) of section B should include a reference to "ancestral homes" to take account of the interests of indigenous communities. Paragraph (o) of section B should include a reference to nuclear weapons. Article xx should be deleted, as it would create problems of interpretation of the crimes defined in article 5. If elements of crimes were intended to serve only as guidelines, then they had no place in an instrument embodying the legal rights and duties of States. If, on the other hand, they were essential to understanding the legal nature of crimes, they must form part of the definition of crimes and could not be entrusted to the Preparatory Commission or consigned to an annex.

60. **Mr. JURGELEVICIUS** (Lithuania) endorsed the statement made by the representative of Austria on behalf of the European Union. His delegation favoured option I in article 7 *bis*. It also favoured option 1 for article 7, paragraph 2, as the most likely basis for compromise. On the role of the Security Council, Lithuania would accept option 1 for article 10, with the inclusion of a paragraph concerning the need for preservation of evidence. It also favoured *proprio motu* powers for the Prosecutor, and believed that no safeguards were needed other than those provided for in the proposed text for article 12. Its position with regard to elements of crimes was that they should have no binding effect. Lastly, it strongly favoured inclusion of the crime of aggression in the Statute and hoped that, if efforts to agree on a definition failed, it would be included under the appropriate amendment procedure in the near future.

61. **Mr. NEGA** (Ethiopia) said his delegation regretted the fact that, although inclusion of the crime of aggression was favoured by the overwhelming majority of States, the wish of the majority had been disregarded. Treaty crimes should also be included in the Statute, and their definition entrusted to the Preparatory Commission. Ethiopia reiterated its support for article 6, paragraph (a); paragraph (b) should be clarified through a specific reference to

the relevant crime or crimes, and the Security Council's power of referral should be confined to acts of aggression. As it stood, paragraph (b) would transform the Court into a subsidiary organ of the Security Council. Paragraph (c) was unacceptable to his delegation, as was the current wording of article 12, to which paragraph (c) was closely related.

62. Ethiopia favoured an opt-in approach, but it was prepared to consider option II for article 7 *bis*. It supported option 1 for article 7, paragraph 2, subject to the deletion of the reference to article 6, paragraph (c). On the threshold for war crimes in article 5 *quater*, it was now willing to accept option 2. On weapons, it was disappointed that option 2 for section B, paragraph (o), of the provisions on war crimes in document A/CONF.183/C.1/L.53, which had commanded overwhelming support, had been discarded, but could accept the new paragraph (o) subject to inclusion therein of nuclear weapons and anti-personnel landmines.

63. Ethiopia's position concerning article 10 remained unchanged. Article 12 was unacceptable as currently worded: conferral of *proprio motu* powers on the Prosecutor would be detrimental to the independence, universality and effectiveness of the Court. Article 18 set forth the important principle of *ne bis in idem*, but the exceptions provided for in subparagraphs (a) and (b) of its paragraph 3 required careful consideration. Subparagraph (b) might lead to undue interference in internal judicial matters, and should be deleted.

64. **Mr. AL ADHAMI** (Iraq) said that the Bureau proposal did not reflect the views expressed in the Conference, particularly by countries of the Non-Aligned Movement. Iraq favoured inclusion of the crime of aggression in the Statute, and adoption of the definition of aggression annexed to General Assembly resolution 3314 (XXIX). Economic embargoes should be added to the list of crimes against humanity. With regard to war crimes, nuclear weapons should be included in the list in paragraph (o). Internal armed conflicts not of an international nature should not fall within the jurisdiction of the Court. On exercise of jurisdiction, situations should be referred to the Prosecutor only by a State party, and paragraphs (b) and (c) of article 6 should therefore be deleted. On article 7 *bis*, Iraq favoured automatic jurisdiction over all three core crimes. For article 10, it favoured option 3, as the best guarantee of the Court's independence. It opposed conferral of *proprio motu* powers on the Prosecutor; an investigation should be initiated by the State party directly affected.

65. Article 15 must be drafted so as to make it consistent with the principle of complementarity between the Court and national jurisdictions. The words "unless the State is unwilling or unable genuinely to carry out the investigation or prosecution" should be deleted from subparagraph (a) of paragraph 1, the words "unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute" from subparagraph (b) and the words "and a trial by the Court is not permitted under paragraph 3 of article 18" from subparagraph (c). Paragraphs 2 and 3 should be deleted *in toto*. Article 16 was acceptable. Paragraph 3 of article 18 should be deleted, to take account of the principle of complementarity.

66. **Mr. KESSEL** (Canada) said that Canada was committed to automatic jurisdiction for the three core crimes, as proposed in option I of article 7 *bis*. On article 7, it supported paragraph 1 on genocide and option 1 for paragraph 2. In article 12, option 1 was its preferred choice: the necessary checks and balances were already in the text. On article 10, Canada recognized that in order to maintain international peace and security the Security Council might need to request the suspension of investigations or prosecution by the Court. Option 1 provided a good basis for compromise.

67. As for sections C and D of article 5 *quater*, it was essential that non-international armed conflict should be included in the Statute. The new *chapeau* for section D might have set too high a threshold, and should be reviewed. As for elements of crimes, the language of article xx needed considerable revision. His delegation was concerned

at the suggestion that the elements should be binding and must be adopted before the Prosecutor commenced an investigation. Furthermore, the paragraph might be better located in the resolution on the work of the Preparatory Commission. Lastly, Canada fully supported article 15 as currently drafted.

68. **Mr. SKIBSTED** (Denmark) said his delegation shared the misgivings expressed concerning the threshold in relation to war crimes committed in internal armed conflicts, which was too high and unduly restrictive. It also regretted that section D of article 5 *quater* contained no provision on prohibited weapons corresponding to the one in paragraph (o) of section B.

69. Denmark supported option 1 for paragraph 12, and would be opposed to additional safeguards before the Prosecutor could act. It endorsed the views expressed at the 33rd meeting by the representative of Germany concerning the crime of aggression and article xx, and would prefer to see paragraph 4 of article xx deleted or at least redrafted. Denmark firmly believed that the Court should have automatic jurisdiction over all three core crimes, and thus saw option I in article 7 *bis* as of crucial importance. As to article 7, it was vital that the Court should have a uniform jurisdictional regime for all core crimes, and Denmark would favour the redrafting of paragraph 1 of article 7 to make it applicable also to crimes against humanity and war crimes.

70. **Mr. DAUTO JEICHANDE** (Mozambique) said that, despite events in Rwanda and the former Yugoslavia, the belief apparently persisted that it was more important to refine definitions than to treat aggression as a crime. With sufficient political will, questions concerning the definition of crimes or the role of the Security Council could be solved. While the proposal submitted by the Non-Aligned Movement was not perfect, it could serve as the basis for a definition of aggression that could be supported by all participants, subject to further clarification.

71. On war crimes, Mozambique accepted option 2 for the *chapeau* of article 5 *quater*, but believed that the article should include a reference to nuclear weapons and anti-personnel mines. Article 6 was acceptable. Mozambique believed that preconditions to the exercise of jurisdiction should be the same for all core crimes, and supported option 1 for article 7, paragraph 2. It also supported option I in article 7 *bis*. In article 10 it preferred option 3, but could accept option 1 on the understanding that the request of the Security Council could be renewed for no longer than six months, and once only. His delegation favoured conferral of *proprio motu* powers on the Prosecutor, and thus supported option 1 for article 12, which already contained the necessary safeguards. Lastly, article 20 should set out a clear hierarchy of applicable law. However, case law must not be taken as a binding source of applicable law, but only as a source of interpretation.

72. **Mr. CASTELLAR DUARTE** (Nicaragua) said that, with regard to acceptance of jurisdiction, his delegation preferred option I in article 7 *bis*, for the reasons adduced by the representative of Germany. It also favoured option 1 in article 7. It preferred option 1 in article 10, and also option 1 in article 12. Nicaragua accepted article 5, but wished to see the treaty crimes included in the Statute at a later stage, at a review conference or by means of a protocol. The crime of aggression should also be included in the not-too-distant future, and a resolution to that effect might be adopted. With regard to article 5 *quater*, Nicaragua favoured option 2, and regretted the deletion of the reference to nuclear weapons, and to anti-personnel landmines, which continued to cause loss of life and limb in his country. Lastly, Nicaragua favoured retention of paragraph 4 in article xx, as proceedings could not be initiated without proper prior definition of the crime.

73. **Mr. DA COSTA LOBO** (Portugal) said that the proposed new text for section D of article 5 *quater*, on internal armed conflicts, would have the merit of covering situations in which the most serious crimes took place, and would also bring the Statute closer to existing international humanitarian law. With regard to the jurisdiction of the Court, although it subscribed to the principle of universal jurisdiction, Portugal was willing, in a spirit of

compromise, to accept option I of article 7 *bis* and option 1 of article 7, paragraph 2. It also believed that the core crimes should be given uniform treatment.

74. With regard to the powers of the Prosecutor, option 1 of article 12 struck an appropriate balance. Article 16, however, still posed problems, particularly with regard to the status of States not parties, which would enjoy prerogatives without assuming the concomitant obligations. Portugal also had reservations concerning paragraph 4 of article xx, and endorsed the comments made by the representative of Austria concerning the role of the Security Council.

75. **Mr. PRANDLER** (Hungary) said that the Bureau proposal required his delegation to make a number of painful concessions, which it was willing to make in a spirit of compromise. Hungary favoured automatic jurisdiction for all three core crimes and a unified regime for the preconditions to the exercise of jurisdiction. On the question of weapons, it could accept paragraph (o) in section B of article 5 *quater*, with its important reference to "inherently indiscriminate" weapons. The *chapeau* of section D could be accepted with some revision. Article xx was acceptable as a compromise text, but its application should not delay the entry into force of the Statute. Option 1 in article 10 was acceptable, as were articles 12 and 15. Article 16 was only acceptable as part of a package.

76. **Ms. TALVET** (Estonia) said that conferral of *proprio motu* powers on the Prosecutor was important for the credibility of the Court; her delegation thus supported the inclusion of article 6 (c) and of article 12. It also strongly favoured automatic jurisdiction over all three core crimes, as under option I of article 7 *bis*, and endorsed the reservations expressed by others regarding the *chapeau* to section D of article 5 *quater*. As to preconditions to the exercise of jurisdiction, it favoured a unified regime and supported option 1 in article 7, paragraph 2. Her delegation was uncomfortable with paragraph 4 of article xx, but could accept option 1 in article 10.

77. **Mr. FLORIAN** (Romania) said his delegation supported the statement made by the representative of Austria on behalf of the European Union. Romania favoured automatic jurisdiction of the Court over the three core crimes and option I in article 7 *bis*. On preconditions, it supported article 7, paragraph 1, on genocide, and option 1 for article 7, paragraph 2. It preferred option 1 in article 10, on the role of the Security Council, and considered article 12 a good basis for a compromise concerning the role of the Prosecutor. As to elements of crimes, article xx required substantial redrafting.

78. **Mr. MASUKU** (Swaziland) said his delegation favoured option I in article 7 *bis* and, concerning preconditions to the exercise of jurisdiction, had a strong preference for option 1 in article 7, paragraph 2. Concerning the role of the Security Council, it supported option 1 for article 10. Article 12 was well drafted, and already contained sufficient safeguards. Article xx, however, required further drafting, and elements of crimes should serve as guidelines, with no binding force.

79. **Mr. CLAPHAM** (Solomon Islands) said that his delegation, too, favoured automatic jurisdiction for all three core crimes and option I in article 7 *bis*. On preconditions, it favoured option 1 in article 7, paragraph 2, and opposed option 3, which placed too much emphasis on the State of nationality. On the role of the Security Council, option 1 should be retained for article 10, subject to inclusion of a provision on the preservation of evidence. A combination of options 1 and 2 specifying a definite time period might also provide an acceptable solution. In article 12, option 1 was acceptable, and sufficient safeguards already existed. On article xx, the question of elements should not delay the entry into force of the Statute, and paragraph 4 should be amended or deleted.

80. On the question of war crimes in internal armed conflict, his delegation supported the inclusion of sections C and D in article 5 *quater*. However, the new *chapeau* to section D did not take account of the sort of contemporary

conflict the Court was designed to address. If the *chapeau* was retained, it should be amended to cover armed conflict between armed groups, as suggested by the representative of Sierra Leone.

81. **Ms. O'DONOGHUE** (Ireland) said her delegation was not convinced that article xx was necessary, but would be willing to see a provision on elements of crimes included in the Statute. The elaboration of elements of crimes must not delay its entry into force or the operation of the Court, and elements of crimes should constitute guidelines of a non-binding nature. Consequently, paragraph 4 should be deleted.

82. On jurisdictional matters, the Court should have automatic jurisdiction over the three core crimes, and Ireland thus favoured option I in article 7 *bis*. On preconditions to the exercise of jurisdiction, it believed that option 1 in article 7 should apply to all three crimes. *Proprio motu* powers for the Prosecutor were essential to the effectiveness of the Court, and option 1 in article 12 already contained sufficient safeguards. However, in a spirit of compromise, she could accept additional safeguards, and suggestions made concerning article 16 might be useful in that regard. Lastly, on the role of the Security Council, she could accept option 1 in article 10, but not the "specified period of time" referred to in option 2.

83. **Mr. RUPHIN** (Madagascar) said that the international community must not remain indifferent to the plight of defenceless countries, or allow aggressors to act with impunity. The crime of aggression should be included among the crimes over which the Court had jurisdiction. As for the treaty crimes, if it proved impossible to give them proper consideration at the Conference, they should be considered at a review conference to be held in the not-too-distant future. With regard to acceptance of jurisdiction, he favoured automatic jurisdiction over the most serious crimes, as under option I of article 7 *bis*. On article 8, he favoured non-retroactivity.

84. **Mr. SKELEMANI** (Botswana) said he looked forward to seeing the final text of the provisions on crimes of sexual violence, provisions to which he attached great importance. In article 5 *quater*, he favoured option 2, and deplored the exclusion of nuclear weapons and landmines from the list of prohibited weapons. Sections C and D were acceptable, although the latter, in particular, might be further improved. With regard to article xx, elements of crimes were acceptable if they took the form of guidelines, but they would need to be negotiated before signature of the Statute.

85. He was at a loss to understand the difficulties regarding definition of the crime of aggression. As to the acceptance of jurisdiction, he favoured automatic jurisdiction over all core crimes. On the role of the Security Council, the question of the period of time for which the Council could request a suspension needed further negotiation. In principle, however, options 1 and 2 in article 10 were acceptable. Option 1 for article 12 was also acceptable, particularly when the article was read in conjunction with article 16.

The meeting rose at 9 p.m.